

Un-Official Text - For Information Only

# PUBLIC CONTRACT CODE

## ARTICLE 4 CONTRACTS FOR SERVICES SECTION 10335 THROUGH SECTION 10382

EFFECTIVE JANUARY 1, 2001

As a result of AB 2304, effective January 1, 2001, the following will constitute the Public Contract Code provisions for Services and Consulting Services.

Action/Section	Effect	Compares with, or replaces:
Amends §10335	<ul style="list-style-type: none"> <li>Exempts Ks &lt; \$5,000 from Article 4</li> <li>Adds §10366 language</li> </ul>	<ul style="list-style-type: none"> <li>§10366(repealed)</li> </ul>
Amends §10335.5	Defines Consultant Services Contract	<ul style="list-style-type: none"> <li>§10356(repealed)</li> </ul>
Amends §10336	Grammatical Changes – No affect	<ul style="list-style-type: none"> <li>§10363(repealed)</li> </ul>
§10337	No Changes	<ul style="list-style-type: none"> <li>§10362(repealed)</li> </ul>
Amends §10339	Grammatical Changes – No affect	<ul style="list-style-type: none"> <li>§10373(repealed)</li> </ul>
Amends §10340	Exempts certain contracts from bidding <ul style="list-style-type: none"> <li>Small business (§14838.5)</li> <li>Contracts for licensing &amp; testing exams</li> </ul>	
Repeals §10343	Protest language moved to §10345	<ul style="list-style-type: none"> <li>§10376(repealed)</li> </ul>
Amends §10344	Grammatical Changes – No affect	<ul style="list-style-type: none"> <li>§10377(repealed)</li> </ul>
Amends §10344.1	Grammatical Changes – Encompasses all bargaining units.	<ul style="list-style-type: none"> <li>§10344.3</li> </ul>
Repeals §10344.3	Eliminates Bargaining unit 19 special provision	<ul style="list-style-type: none"> <li>§10344.1(amended)</li> </ul>
Amends §10345	Incorporates all protest procedures	<ul style="list-style-type: none"> <li>§10343(repealed)</li> <li>§10376(repealed)</li> </ul>
Amends §10346	Grammatical Changes – No affect	
Amends §10348	Adds authority for DGS to describe conditions for waiving provisions on contracts < \$20,000	
Adds §10348.5	Adds §10359 language requiring Contract Manager	<ul style="list-style-type: none"> <li>§10358(repealed)</li> </ul>
Amends §10349	Incorporated into §10335.5	
Amends §10351	Grammatical Changes – No affect	
Amends §10353	<ul style="list-style-type: none"> <li>Grammatical Changes – No affect</li> <li>Exempts consultant contracts</li> </ul>	
Removes Heading Article 5	There is no Article 5, only Article 4	
Repeals §10356	Incorporated into §10335.5	<ul style="list-style-type: none"> <li>§10335.5(amended)</li> </ul>
Amends §10357 & renumbers to §10335.7	Grammatical Changes – No affect	
Repeals §10358	Incorporated into §10348.5	<ul style="list-style-type: none"> <li>§10348.5(amended)</li> </ul>
Amends §10359	Grammatical Changes – No affect	<ul style="list-style-type: none"> <li>§10335(amended)</li> </ul>
Repeals §10360	Incorporated into §10335	<ul style="list-style-type: none"> <li>§10335(amended)</li> </ul>
Repeals §10362	Covered by §10337	<ul style="list-style-type: none"> <li>§10337(no change)</li> </ul>
Repeals §10363	Covered by §10336	<ul style="list-style-type: none"> <li>§10336(amended)</li> </ul>
Repeals §10364	Covered by §10351	<ul style="list-style-type: none"> <li>§10351(amended)</li> </ul>
Repeals §10365	Covered by §10352	<ul style="list-style-type: none"> <li>§10352(amended)</li> </ul>
Repeals §10366	Covered by §10335	<ul style="list-style-type: none"> <li>§10335(amended)</li> </ul>
Amends §10367	Grammatical Changes – No affect	
Amends §10369	Simple Changes – No affect	
Amends §10370	Simple Changes – No affect	

Amends §10371	Grammatical Changes – No affect	
Repeals §10372	Covered by §10339	• §10339(amended)
Repeals §10373	Covered by §10340	• §10340(amended)
Repeals §10374	Covered by §10341	• §10341(amended)
Repeals §10375	Covered by §10342	• §10342(amended)
Repeals §10376	Covered by §10345	• §10345(amended)
Repeals §10377	Covered by §10344	• §10344(amended)
Repeals §10378	Covered by §10345	• §10345(amended)
Repeals §10379	Covered by §10346	• §10346(amended)
Repeals §10380	Covered by §10348	• §10348(amended)
Amends §10381	Grammatical Changes – No affect	
Repeals §10382	Reporting – No affect	

ARTICLE 4. Contracts for Services

**10335.** (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Section 10351, all contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval. This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts ~~covered under Article 5 (commencing with Section 10355), contracts~~ for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for ~~architectural and engineering~~ services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are ~~expressly excepted from listed as exceptions in~~ Section 10295, contracts of less than ~~one thousand dollars (\$1,000) in amount, or to contracts of less than~~ five thousand dollars (\$5,000) in amount, contracts of less than five thousand dollars (\$5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars (\$20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section ~~6257~~ 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:  
(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

(3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

**10335.5.** (a) "Consulting services contract," as used in this article, means services that do all of the following:

- (1) Are of an advisory nature.
- (2) Provide a recommended course of action or personal expertise.
- (3) Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and program management or innovation.
- (4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type. The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) "Consulting services contract" does not include any of the following:

- (1) Contracts between a state agency and the federal government.
- (2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consulting services contracts are exempt from the advertising and bidding requirements of this article:

- (1) Contracts that are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.
- (2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.
- (3) Contracts solely for the purpose of obtaining expert witnesses for litigation.
- (4) Contracts for legal defense, legal advice, or legal services.
- (5) Contracts in an amount of less than five thousand dollars (\$5,000).
- (6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

**10335.7.** "State agency," as used in this article, means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government.

**10336.** The Department of Finance may establish those controls over approval of contracts by the Department of General Services department as are necessary to assure that approval is consistent with program and budgetary determinations of the Department of Finance. The controls established under this section shall not be constructed in a fashion or be construed in a manner which would authorize the Department of Finance to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the Department of General Services department pursuant to this article. The Department of Finance, when it has reason to believe that a proposed contract is not in compliance with its program and budgetary determinations, may direct a state agency to transmit the

contract to it for review. It is the intent of the Legislature, however, that any review of this type shall be restricted to individual contracts and shall occur only if no alternative course of action satisfactory to the Department of Finance is available.

**10337.** (a) The State Personnel Board may establish such standards and controls over approval of contracts by the Department of General Services as are necessary to assure that the approval is consistent with the merit employment principles and requirements contained in Article VII of the California Constitution. The substantive provisions of the standards shall be established at the discretion of the State Personnel Board. The specific procedures for contract review pursuant to such standards shall be established jointly by the board and the department. It is the intent of the Legislature that except as provided in this section, the standards and controls established under this subdivision shall not be constructed in such a fashion or construed in such a manner as to authorize the State Personnel Board to establish a separate program for reviewing and approving each and every contract in the place of, or in addition to, the program administered by the Department of General Services pursuant to this article. The State Personnel Board may, when it has reason to believe that a proposed contract is not in compliance with the provisions of Section 19130 of the Government Code, and shall, when requested to do so by an employee organization representing state employees, direct a state agency to transmit the contract to it for review.

(b) The State Personnel Board shall direct any state agency to transmit to it for review any contract proposed or executed pursuant to subdivision (a) of Section 19130 of the Government Code, if the review has been requested by an employee organization notified pursuant to Section 19131 of the Government Code. The review shall occur prior to any review conducted by the Department of General Services. The board shall restrict its review to the question as to whether the contract complies with the provisions of subdivision (a) of Section 19130 of the Government Code and any additional standards and controls established pursuant to subdivision (a) of this section. The board may disapprove the contract only if it determines that the contract does not comply. The board shall delegate the review of such a contract to the executive officer of the board. Within 15 days of its receipt, the executive officer shall notify the employee organization which requested the review whether he or she intends to approve or disapprove it. If the employee organization requests it, the executive officer shall grant the employee organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the board for a hearing. Upon a showing of good cause by the employee organization, the executive officer shall schedule the disputed contract for a hearing before the board for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. In any case, the executive officer shall approve or disapprove the contract or refer it to the board for a hearing within 30 days of its receipt. The reasons for a decision by the executive officer, or the board, approving or disapproving the contract shall be stated in writing.

(c) A contract proposed or executed pursuant to subdivision (b) of Section 19130 of the Government Code shall be reviewed by the State Personnel Board if the board receives a request to conduct such a review from an employee organization representing state employees. Any such review shall be restricted to the question as to whether the contract complies with the provisions of subdivision (b) of Section 19130 of the Government Code. The board shall delegate the review of such a contract to the executive officer of the board. If the employee organization requests it, the executive officer shall grant the employee organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the board for a hearing. Upon a showing of good cause by the employee organization, the executive

officer shall schedule the disputed contract for a hearing before the board for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. The executive officer shall approve or disapprove the contract or refer it to the board for a hearing within 30 days of its receipt. The reasons for the decision by the executive officer, or the board, approving or disapproving the contract shall be stated in writing.

(d) Contracts subject to State Personnel Board review under this section shall not become effective unless and until approval is granted.

**10338** (Repealed by Stats 1990)

**10339.** (a) Subject to the provisions of Section 10348, no state agency shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a contract, in ~~such a manner as to limit~~ a manner that limits the bidding directly or indirectly to any one bidder.

(b) Any contract awarded in violation of subdivision (a) shall be void.

**10340.** (a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.

(b) Three competitive bids or proposals are not required in any of the following cases:

(1) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.

(2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals.

(3) The contract is with another state agency, a local governmental entity, an auxiliary organization of the California State University, an auxiliary organization of a California community college, a foundation organized to support the Board of Governors of the California Community Colleges, or an auxiliary organization of the Student Aid Commission established pursuant to Section 69522 of the Education Code. These contracts, however, may not be used to circumvent the competitive bidding requirements of this article.

(4) The contract meets the conditions prescribed by the department pursuant to subdivision (a) of Section 10348.

(5) The contract has been awarded without advertising and calling for bids pursuant to Section 19404 of the Welfare and Institutions Code.

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations.

(c) Any agency which has received less than three bids or proposals on a contract shall document, in a manner prescribed by the department, the names and addresses of the firms or individuals it solicited for bids or proposals.

**10341.** Whenever a contract subject to the provisions of this article is awarded under a procedure which provides for competitive bidding, the bids shall be publicly opened at the time stated in the invitation for bids and the dollar amount of each bid shall be read. No bids shall be considered which have not been received at the place, and prior to the closing time for bids, stated in the invitation for bids.

**10342.** After opening, all bids shall be available for public inspection.

**10343.** Whenever a contract is awarded under a procedure providing for competitive bidding, but the contract is not to be awarded to the low bidder, the low bidder shall be given notice five working days prior to the award of the contract by telegram, electronic facsimile transmission, overnight courier, or personal delivery. Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a public place in the offices of the contracting agency at least five working days prior to awarding the contract. If, prior to the award, any bidder files a protest with the state agency and department against the awarding of the contract on the ground that he or she is the lowest responsible bidder meeting the specifications for the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter. Within five days after filing the protest, the protesting bidder shall file with the department a full and complete written statement specifying the grounds for the protest. The department shall establish written procedures for deciding protests.

**10344.** (a) Contracts subject to the provisions of this article may be awarded under a procedure which makes use of a request for proposal. State agencies **which that** use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format **which that** proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due and the timetable the agency will follow in reviewing and evaluating them. State agencies which use a procedure **which that** makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c). No proposals shall be considered **which that** have not been received at the place, and prior to the closing time, stated in the request for proposal.

(b) State agencies **which that** use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope. Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those **which that** meet the format requirements and the standards specified in the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals **which that** meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies **which that** use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a description of the methods **which that** will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder. Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods

specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.

(d) Nothing in this section shall require the awarding of the contract if no proposals are received containing bids offering a contract price ~~which~~ that in the opinion of the state agency is a reasonable price.

10345. (a) Whenever a contract is awarded under a procedure providing for competitive bidding, but the contract is not to be awarded to the low bidder, the low bidder shall be given notice five working days prior to the award of the contract by telegram, electronic facsimile transmission, overnight courier, Internet transmission, or personal delivery.

(1) Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a place accessible by the general public, including any Internet site identified in the invitation for bids at least five working days prior to awarding the contract.

~~10345. Contracts awarded under the provisions of Section 10344 shall be awarded only after a notice of the proposed award has been posted in the offices of the contracting agency for five working days.~~

(2) If, prior to the award, any bidder files a protest with the awarding state agency and the department protesting the award of the contract on the grounds that he or she is the lowest responsible bidder meeting the specifications for the contract, the contract shall not be awarded until either the authority and protest has been withdrawn or the department has decided the matter.

(3) Within five days after filing the protest, the protesting bidder shall file with the department and the awarding state agency a full and complete written statement specifying the grounds for the protest.

(b) Contracts awarded under the provisions of Section 10344 shall be awarded only after a notice of the proposed award has been posted in a place accessible by the general public, including any Internet site identified in the request for proposal, for five working days.

(1) If, prior to the award, any bidder files a protest with the awarding state agency and the department against the awarding of the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

(2) Within five days after filing the protest, the protesting bidder shall file with the department and awarding state agency a full and complete written statement specifying the grounds for the protest. Protests shall be limited to the following grounds:

~~(a)~~ (A) The state agency failed to follow the procedures specified in either subdivision (b) or (c) of Section 10344.

~~(b)~~ (B) The state agency failed to apply correctly the standards for reviewing the format requirements or evaluating the proposals as specified in the request for proposal.

~~(c)~~ (C) The state agency used the evaluation and selection procedure in subdivision (b) of Section 10344, but is proposing to award the contract to a bidder other than the lowest responsible bidder.

~~(d)~~ (D) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but failed to follow the methods for evaluating and scoring the proposals specified in the request for proposal.

~~(e)~~ (E) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but is proposing to award the contract to a bidder other than the bidder given the highest score by the state agency evaluation committee.

(c) The department shall establish written procedures for deciding protests under this section.

**10346.** Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task. No state agency shall make progress payments on a contract unless it first has established procedures, approved by the department, which will ensure that the work or services contracted are being delivered in accordance with the contract.

**10347** (Repealed by Stats 1990)

**10348.** The department shall prescribe the following:

(a) The conditions under which a contract may be awarded without competition, and the methods and criteria which shall be used in determining the reasonableness of contract costs when a contract is awarded without competition.

(b) Any special requirements for evaluating multiple-year contracts which the department deems necessary to protect the financial interest of the state.

(c) For contracts of less than twenty thousand dollars (\$20,000), the conditions under which some or all of the provisions of this article may be waived in order to assist agencies in obtaining services and consultant services in an efficient and timely manner.

**10349.** The Department of Personnel Administration shall establish a program for training state agency contracting personnel in contract administration and contract management. The cost of training state agency contracting personnel shall be paid by state agencies out of their appropriations for personnel training. The Department of Personnel Administration shall, prior to establishing the training program required by this section, consult with the Department of General Services department concerning the training curriculum and the development of a training manual on contract administration.

**10350.** The department shall report to the Legislature, in accordance with such procedures as the Legislature may require, those contracts entered into by state agencies which the Legislature specifies in the Budget Act.

**10351.** (a) The department shall exempt from its approval contracts under seventy-five thousand dollars (\$75,000) that any state agency awards if the state agency does all of the following:

- (1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.
- (2) Establishes written policies and procedures and a management system that will ensure the state agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.
- (3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.
- (4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives **such** a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

**10352.** (a) The department shall conduct a quality control review of the audit of the contracting program required by Section 10351.

(b) The exemption provided by Section 10351 may be withdrawn by the department at any time that the department finds that the state agency to which the exemption has been granted is out of compliance with the requirements of Section 10351. In any case where the exemption is withdrawn, the department shall state in writing, the reasons for the withdrawal and shall specify the actions the state agency is required to take before the exemption again may be requested.

**10353.** A contract in an amount in excess of two hundred thousand dollars (\$200,000) **which that** is governed by the provisions of this part shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a project as defined in Section 10105. This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

(a) Interfere with or create a violation of the terms of valid collective bargaining agreements.

(b) Require the contractor to hire an unqualified recipient of aid.

(c) Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.

(d) Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code.

If waivers are deemed necessary to implement this section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and if the State Department of Social Services has not obtained these waivers from the federal government by March 1, 1985, the department shall report on the barriers to the waivers and the expected date of waiver approval. **This section is not applicable to consulting services contracts.**

**10354.** Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

~~ARTICLE 5. Consulting Services Contracts~~

**10355.** (Repealed by Stats 2000)

**10356.** (Repealed by Stats 2000)

**10357.** (Amended and renumbered to § 10335.7)

**10358.** (Repealed by Stats 2000)

**10359.** (a) Each state agency ~~or department~~ shall annually prepare a report pursuant to this section ~~which that~~ includes a list of the ~~consultant consulting services~~ contracts into which it has entered during the previous fiscal year. The listing shall include the following information:

- (1) The name and identification of each contractor.
- (2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.
- (3) The amount of the contract price.
- (4) Whether the contract was a sole-source contract, and why the contract was a sole-source contract.
- (5) The purpose of the contract and the potential beneficiaries.
- (6) The date on which the initial contract was signed, the date on which the work began and was completed.

The report shall also include a separate listing of consultant contracts completed during that fiscal year, with the same information as above.

(b) The report this section requires shall also include a list of any contracts underway during that fiscal year on which any change was made regarding the following:

- (1) The completion date of the contract.
- (2) The amount of money to be received by the contractor, if it exceeds 3 percent of the original contract price.
- (3) The purpose of the contract or duties of the contractor. A brief explanation shall be given if the change in purpose is significant.

(c) Copies of the annual report shall be sent within 30 working days after the end of the previous fiscal year to the Legislative Analyst, the Department of Finance, the Department of General Services, the Auditor General, the Joint Legislative Budget Committee, the Senate Appropriations Committee, and the Assembly Ways and Means Committee.

(d) State agencies ~~or departments~~ shall not use the temporary budget allocation process as a means of circumventing the requirements of this section.

(e) Sixty days after the close of the fiscal year, the **Department of General Services department** shall furnish to the officials and committees listed in subdivision (c), a list of the departments and agencies **which that** have not submitted the required report specified in this section.

**10360.** (Repealed by Stats 2000)

**10361** (Repealed by Stats 1983)

**10362.** (Repealed by Stats 2000)

**10363.** (Repealed by Stats 2000)

**10364.** (Repealed by Stats 2000)

**10365.** (Repealed by Stats 2000)

**10366.** (Repealed by Stats 2000)

**10367.** (a) Each contractor shall be advised in writing on the standard contract form that his or her performance, or the firm's performance under the contract will be evaluated.

(b) The department shall use standardized evaluation forms and **submit the forms make them available** to every state agency **-or department**. Each state agency **or department** shall use post-evaluation forms to evaluate all consulting services contracts totaling five thousand dollars (\$5,000) or more. The department shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to the state, and a form for assessing the usability and utility of the completed consulting services contract.

**10368.** (Repealed by Stats 1990)

**10369.** (a) Each state agency shall conduct a post-evaluation, by completing the post-evaluation form, of each consulting services contract totaling five thousand dollars (\$5,000) or more that it executes.

(b) The agency shall evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded. The agency shall report on all of the following:

(1) Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.

(2) Whether the contracted work or services met the quality standards specified in the contract.

(3) Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.

(4) Factors outside the control of the contractor that caused difficulties in contractor performance.

(5) Other information the department may require.

(6) How the contract results and findings will be utilized to meet the agency goals.

(c) If the contractor's performance was judged unsatisfactory on any of the factors specified in subdivision (b) and was not mitigated by circumstances specified in paragraph (4) of subdivision (b), the evaluation shall be considered unsatisfactory for the purposes of subdivisions (e) and (f).

(d) The post-evaluation shall be prepared within 60 days of the completion of the contract.

(e) Post-evaluations shall remain on file ~~by at~~ the offices of the awarding state agency for a period of 36 months following contract completion. If the contractor did not satisfactorily perform the work or service specified in the contract, the state agency conducting the evaluation shall place one copy of the evaluation form in the state agency's contract file and send one copy of the form to the department within five working days of the completion of the evaluation.

(f) Upon filing an unsatisfactory evaluation with the department, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have ~~30 days to prepare and send statements to the agency and the department defending his or her performance the right, within 30 days after receipt, to submit to the awarding state agency and the department, a written under the contract. The contractor's statement response statement that~~ shall be filed with the evaluation in the state agency's contract file and in the department.

**10370.** The evaluations and contractor responses on file with the state agencies and the department shall not be public records. The department shall act as a central depository for all state agencies making evaluation or desiring information on a contractor's record with the state and shall send a copy of any post-evaluation report and response to the contracting manager or contracting officer of any state agency upon ~~receiving a written, telephonic or other form of request stating the reason for the~~ request. The post-evaluations and contractor responses shall remain on file for a period of 36 months only. Failure by the awarding state agency to send a negative post evaluation to the department ~~shall~~ may be grounds for rejection of future contracts or modification of exemptions.

**10371.** The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars (\$12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars (\$12,500) approved by the department.

(c) Each state agency shall, prior to signing a consulting services contract totaling ~~one~~ five thousand dollars ~~(\$1,000), or more (\$5,000) or more,~~ prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award. For the purpose of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

(e) No consulting services contractor shall be awarded a contract totaling five thousand dollars (\$5,000), or more, unless all of the following apply:

- (1) The state agency has reviewed any contractor evaluation form on file with the ~~Department of General Services department~~ in accordance with Section 10369.
- (2) Each state agency shall require that a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.
- (3) The ~~Department of General Services department~~ shall notify an a state agency seeking approval of a proposed contract within 10 working days if ~~the Department of General Services~~ it has a negative evaluation in its files on a previous contract or contracts ~~done by~~ awarded to this contractor.

(f) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

(g) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

(h) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the state agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

**10372.** (Repealed by Stats 2000)

**10373.** (Repealed by Stats 2000)

**10374.** (Repealed by Stats 2000)

**10375.** (Repealed by Stats 2000)

**10376.** (Repealed by Stats 2000)

**10377.** (Repealed by Stats 2000)

**10378.** (Repealed by Stats 2000)

**10379.** (Repealed by Stats 2000)

**10380.** (Repealed by Stats 2000)

**10381.** (a) The department shall ensure that all state agencies ~~and departments~~ are kept fully informed of the department's plans and procedures for implementing the provisions of this article. The department shall make information available on implementation procedures to all interested parties.

(b) The department shall ensure that every consultant services contract contains standard language that fully informs the contractor of his or her duties, obligations, and rights under this article, and any additional contractor rights and obligations which the department determines should be included.

(c) Each consulting services contract shall have a provision for settlement of contract disputes.

**10382.** (Repealed by Stats 2000)